

AMENDED IN SENATE AUGUST 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1306

Introduced by Assembly Member Leno

February 21, 2003

An act to amend Section ~~1203.1b~~ of, and to add Section ~~1203.95~~ to, ~~1203.9~~ of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1306, as amended, Leno. Probation: transfer of cases.

Existing law sets forth procedures under which a person released upon probation may be transferred to the care and custody of the probation officer of another county. Existing law also authorizes the court to order a probationer, pursuant to specified procedures, to pay all or a portion of the reasonable cost of processing a transfer of probation to another county. Existing law, added by an initiative measure that permits amendment only by roll call vote of $\frac{2}{3}$ of the membership of both houses of the Legislature, provides for special terms and conditions of probation in cases involving possession of controlled substances and related charges.

This bill would provide special probation transfer procedures, ~~including a specific limitation on a the ability of the court in a county to refuse to accept a transfer of jurisdiction over a probationer~~, for people on probation under the initiative provisions relating to controlled substance possession and similar charges. Once transferred, the probationer would be under the jurisdiction of the court in the new county for all purposes, including probation supervision and treatment.

By providing a special probation transfer process applicable only to these controlled substance offenders, this bill would amend an initiative requiring a $\frac{2}{3}$ vote of both houses of the Legislature. By requiring a county to accept a transfer of probation in certain circumstances, obligating that county to provide supervision and treatment, and to address violations of probation with prosecution and other resources, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1203.1b of the Penal Code is amended~~

2 SECTION 1. Section 1203.9 of the Penal Code is amended to
3 read:

4 1203.9. (a) Whenever any person is released upon probation,
5 the case may be transferred to any court of the same rank in any
6 other county in which the person resides permanently, meaning the
7 stated intention to remain for the duration of probation; provided
8 that the court of the receiving county shall first be given an
9 opportunity to determine whether the person does reside in and has
10 stated the intention to remain in that county for the duration of
11 probation. If the court finds that the person does not reside in or
12 has not stated an intention to remain in that county for the duration
13 of probation, it may refuse to accept the transfer. The court and the
14 probation department shall give the matter of investigating those
15 transfers precedence over all actions or proceedings therein,
16 except actions or proceedings to which special precedence is given



1 by law, to the end that all those transfers shall be completed
2 expeditiously.

3 (b) *If Except as provided in subdivision (c), if the court of the*
4 *receiving county finds that the person does permanently reside in*
5 *or has permanently moved to the county, it may, in its discretion,*
6 *either accept the entire jurisdiction over the case, or assume*
7 *supervision of the probationer on a courtesy basis.*

8 (c) *Upon a finding of permanent residency pursuant to*
9 *subdivision (b), whenever a person is granted probation under*
10 *Section 1210.1, the entire jurisdiction over the case may be*
11 *transferred at the discretion of the sentencing court.*

12 (d) The order of transfer shall contain an order committing the
13 probationer to the care and custody of the probation officer of the
14 receiving county and an order for reimbursement of reasonable
15 costs for processing the transfer to be paid to the sending county
16 in accordance with Section 1203.1b. A copy of the orders and
17 probation reports shall be transmitted to the court and probation
18 officer of the receiving county within two weeks of the finding by
19 that county that the person does permanently reside in or has
20 permanently moved to that county, and thereafter the receiving
21 court shall have entire jurisdiction over the case, with the like
22 power to again request transfer of the case whenever it seems
23 proper.

24 to read:

25 ~~1203.1b.—(a) In any case in which a defendant is convicted of~~
26 ~~an offense and is the subject of any preplea or presentence~~
27 ~~investigation and report, whether or not probation supervision is~~
28 ~~ordered by the court, and in any case in which a defendant is~~
29 ~~granted probation or given a conditional sentence, the probation~~
30 ~~officer, or his or her authorized representative, taking into account~~
31 ~~any amount that the defendant is ordered to pay in fines,~~
32 ~~assessments, and restitution, shall make a determination of the~~
33 ~~ability of the defendant to pay all or a portion of the reasonable cost~~
34 ~~of any probation supervision or a conditional sentence, of~~
35 ~~conducting any preplea investigation and preparing any preplea~~
36 ~~report pursuant to Section 1203.7, of conducting any presentence~~
37 ~~investigation and preparing any presentence report made pursuant~~
38 ~~to Section 1203, and of processing a jurisdictional transfer~~
39 ~~pursuant to Section 1203.9 or of processing a request for interstate~~
40 ~~compact supervision pursuant to Sections 11175 to 11179,~~

~~1 inclusive, whichever applies. The reasonable cost of these services
2 and of probation supervision or a conditional sentence shall not
3 exceed the amount determined to be the actual average cost
4 thereof. A payment schedule for the reimbursement of the costs of
5 preplea or presentence investigations based on income shall be
6 developed by the probation department of each county and
7 approved by the presiding judge of the superior court. The court
8 shall order the defendant to appear before the probation officer, or
9 his or her authorized representative, to make an inquiry into the
10 ability of the defendant to pay all or a portion of these costs. The
11 probation officer, or his or her authorized representative, shall
12 determine the amount of payment and the manner in which the
13 payments shall be made to the county, based upon the defendant's
14 ability to pay. The probation officer shall inform the defendant that
15 the defendant is entitled to a hearing, that includes the right to
16 counsel, in which the court shall make a determination of the
17 defendant's ability to pay and the payment amount. The defendant
18 must waive the right to a determination by the court of his or her
19 ability to pay and the payment amount by a knowing and
20 intelligent waiver.~~

~~21 (b) When the defendant fails to waive the right provided in
22 subdivision (a) to a determination by the court of his or her ability
23 to pay and the payment amount, the probation officer shall refer
24 the matter to the court for the scheduling of a hearing to determine
25 the amount of payment and the manner in which the payments
26 shall be made. The court shall order the defendant to pay the
27 reasonable costs if it determines that the defendant has the ability
28 to pay those costs based on the report of the probation officer, or
29 his or her authorized representative. The following shall apply to
30 a hearing conducted pursuant to this subdivision:~~

~~31 (1) At the hearing, the defendant shall be entitled to have, but
32 shall not be limited to, the opportunity to be heard in person, to
33 present witnesses and other documentary evidence, and to
34 confront and cross-examine adverse witnesses, and to disclosure
35 of the evidence against the defendant, and a written statement of
36 the findings of the court or the probation officer, or his or her
37 authorized representative.~~

~~38 (2) At the hearing, if the court determines that the defendant has
39 the ability to pay all or part of the costs, the court shall set the
40 amount to be reimbursed and order the defendant to pay that sum~~

1 to the county in the manner in which the court believes reasonable
2 and compatible with the defendant's financial ability.

3 (3) ~~At the hearing, in making a determination of whether a~~
4 ~~defendant has the ability to pay, the court shall take into account~~
5 ~~the amount of any fine imposed upon the defendant and any~~
6 ~~amount the defendant has been ordered to pay in restitution.~~

7 (4) ~~When the court determines that the defendant's ability to~~
8 ~~pay is different from the determination of the probation officer, the~~
9 ~~court shall state on the record the reason for its order.~~

10 (e) ~~The court may hold additional hearings during the~~
11 ~~probationary or conditional sentence period to review the~~
12 ~~defendant's financial ability to pay the amount, and in the manner,~~
13 ~~as set by the probation officer, or his or her authorized~~
14 ~~representative, or as set by the court pursuant to this section.~~

15 (d) ~~If practicable, the court shall order or the probation officer~~
16 ~~shall set payments pursuant to subdivisions (a) and (b) to be made~~
17 ~~on a monthly basis. Execution may be issued on the order issued~~
18 ~~pursuant to this section in the same manner as a judgment in a civil~~
19 ~~action. The order to pay all or part of the costs shall not be enforced~~
20 ~~by contempt.~~

21 (e) ~~The term "ability to pay" means the overall capability of~~
22 ~~the defendant to reimburse the costs, or a portion of the costs, of~~
23 ~~conducting the presentence investigation, preparing the preplea or~~
24 ~~presentence report, processing a jurisdictional transfer pursuant to~~
25 ~~Section 1203.9 or 1203.95, processing requests for interstate~~
26 ~~compact supervision pursuant to Sections 11175 to 11179,~~
27 ~~inclusive, and probation supervision or conditional sentence, and~~
28 ~~shall include, but shall not be limited to, the defendant's:~~

29 (1) ~~Present financial position.~~

30 (2) ~~Reasonably discernible future financial position. In no~~
31 ~~event shall the court consider a period of more than one year from~~
32 ~~the date of the hearing for purposes of determining reasonably~~
33 ~~discernible future financial position.~~

34 (3) ~~Likelihood that the defendant shall be able to obtain~~
35 ~~employment within the one-year period from the date of the~~
36 ~~hearing.~~

37 (4) ~~Any other factor or factors that may bear upon the~~
38 ~~defendant's financial capability to reimburse the county for the~~
39 ~~costs.~~

~~(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.~~

~~(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.~~

~~(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed fifty dollars (\$50).~~

~~(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.~~

~~SEC. 2.—Section 1203.95 is added to the Penal Code, to read:~~

~~1203.95. (a) Notwithstanding the provisions of Section 1203.9, whenever any person is granted probation under Section 1210.1, jurisdiction over the case may be transferred at the discretion of the sentencing court to the court in any other county in which the person resides permanently, which shall mean residing with the stated intention to remain for the duration of probation.~~

~~(b) In the event of a transfer of jurisdiction over a case pursuant to subdivision (a), the court in the receiving county shall be given an opportunity to determine, by court hearing, whether the person does reside in that county and has stated the intention to remain for the duration of probation. Only if the receiving court finds that the person either does not reside in that county or does not state an intention to remain in that county for the duration of probation, may the court in the receiving county refuse to accept the transfer.~~

~~(c) An order of transfer made pursuant to subdivision (a) shall contain an order requiring the probationer to report to the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to~~

1 ~~be paid by the sending county in accordance with Section 1203.1b.~~
2 ~~A copy of the orders and probation reports shall be transmitted to~~
3 ~~the court and probation officer of the receiving county within two~~
4 ~~weeks of the finding by that county that the person does~~
5 ~~permanently reside in or has permanently moved to that county,~~
6 ~~and thereafter, the receiving court shall have entire jurisdiction~~
7 ~~over the case, including, but not limited to, probation supervision~~
8 ~~and treatment.~~

9 ~~(d) In the event of a transfer of jurisdiction over a case pursuant~~
10 ~~to subdivision (a), a certified copy of the file may be made and~~
11 ~~forwarded to the county where the person resides and shall include~~
12 ~~the name and address of the legal residence of the person. A~~
13 ~~certified copy shall be deemed to be the same as the original. The~~
14 ~~original court file may be kept in the files of the transferring~~
15 ~~county.~~

16 ~~SEC. 3.~~

17 *SEC. 2.* Notwithstanding Section 17610 of the Government
18 Code, if the Commission on State Mandates determines that this
19 act contains costs mandated by the state, reimbursement to local
20 agencies and school districts for those costs shall be made pursuant
21 to Part 7 (commencing with Section 17500) of Division 4 of Title
22 2 of the Government Code. If the statewide cost of the claim for
23 reimbursement does not exceed one million dollars (\$1,000,000),
24 reimbursement shall be made from the State Mandates Claims
25 Fund.